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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,713	02/27/2004	Colette Seyfried	23-0382	9617
40158	7590	11/23/2004	EXAMINER	
LEONARD & PROEHL, PROF. L.L.C. 3500 SOUTH FIRST AVENUE CIRCLE SUITE 250 SIOUX FALLS, SD 57105			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,713	SEYFRIED, COLETTE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gloria Hale	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2-27-04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the leaf and feather as claimed in claims 9 and 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: The specification does not include the proper antecedent basis for the "illumination member" as claimed in claims 5 and 10. The reference number 40, which is the illumination member, appears to point to a rhinestone. However, rhinestones have been described in the specification as being decorative members. In regard to claim 16, the "sleeve cuff" has not been described in the specification as a "cuff". It is only described in the specification as a "sleeve" The pant cuff also is not described as such. It is only described as a pant leg. Also the "organic form" as claimed in claims 8-10 has not been clearly described in the specification.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6, 10 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The snap and hook and loop components as seen in figures 3 and 4 and claimed in claims 6, 10 and 13 have not been clearly described. It is not clear as to how the single component of a snap fastener and a single component of a hook and

loop fastener mate with the garment when the garment has not been claimed as including the complementary fastener component.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 10 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are not clear for the same reasons as discussed above.

However, the claims, as best understood have been examined on their merits.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,6,7-9,11 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Smart (US 4,825,475).

Smart discloses a retaining device of a round, flexible band conformable around an extremity of a user including engagement means clip or compression. The band is linear and elongated like a snake as broadly claimed and includes an interior surface and an exterior surface. Smart also discloses an interior pocket, which selectively

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retains an accessory, the clip. The band is wearable on a wearer over their clothing, under their clothing or directly on their skin surface as desired.

Claims 1-5,7-9,11,12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Tomlinson et al (US 5,794,769).

Tomlinson discloses a retaining device comprising a flexible band of a lace outer layer and an engagement means being the elastic inner layer for placement as desired around the body or body part of a wearer without clothing, under clothing or over clothing as desired. Tomlinson discloses the outer surface as including indicia and decorative items (col. 7, lines 23-29) and an interior pocket 15 (figure .1A and col. 3 ,line 66 – col. 4, line 6)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,5,10, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smart (US 4,825,475) in view of Tomlinson et al(US 5,794,769).

Smart discloses the invention substantially as claimed except for the indicia as claimed in claim 3, the illumination member as claimed in claim 5, as further including a storage pocket, and the organic snake like linear elongated shape as claimed in claims 10 and 12 and as being encompassed around a sleeve cuff as in claim 16. Tomlinson et al

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discloses a retaining device with indicia, illumination members (col. 7, lines 23-29) and a storage type pocket (15, as seen in figure1A and col. 4, line 6).

Claims 6, 10, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson et al (US 5,794,769) in view of Smart (US 4,825,475).

Tomlinson discloses the invention substantially as claimed except for the specific fasteners as including a clip and the placement around a pant leg or sleeve cuff. Smart discloses the engagement means as not only being a compression means but also as including a clip 26 for additional attachment to a pant leg. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the strap of Tomlinson et al to include additional securing means including the clip as disclosed by Smart in addition to the compression means. It also would have been obvious to use the device on any other tubular garment member such as a sleeve to shorten and secure the sleeve about a wearer.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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